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August 12, 2020

By ECF

The Honorable Lewis A. Kaplan  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

## MEMO ENDORSED

**RE: FTC v. RCG Advances, LLC et al. 1:20-cv-04432-LAK**

Dear Judge Kaplan:

On behalf of defendants Robert L. Giardina (“Giardina”), individually, Robert L. Giardina, as owner of RCG Advances, LLC, and RCG Advances, LLC (“RCG”), in the above referenced matter. I write to inform the Court that on behalf of Giardina and RCG my office will be filing and Order to Show Cause for a temporary restraining order, and respectfully request permission to file parts of the motion and supporting affidavit under seal or redaction pursuant to F.R.C.P. 5.2.

### RELEVANT BACKGROUND

Plaintiff initiated this proceeding against Giardina and “RCG”. On June 10, 2020. *D.E. 1*. The Complaint charges Defendants with various unfair or deceptive acts or practices in or affecting commerce. *Id.* RCG and Merchants entered in a merchant agreement to sell future receipts. *Id.* Plaintiff alleges that Defendants filed improper confessions of judgments against merchants and unauthorized withdrawals from merchant accounts. *Id.*

### PRELIMINARY STATEMENT

This is precisely the case where the contemporaneous co-existence of government-initiated civil action and corresponding criminal investigation warrant a stay of the civil proceedings. Defendants RCG and Giardina now find themselves between the “rock” of the New York State Attorney General’s (“NYAG”)s Petition, which includes a cause of action for criminal usury and the “hard place” of a Southern District of New York United States Attorney’s Office (“SDNY AUSA”) criminal investigation into the same underlying conduct. This ongoing, collaborative endeavor between the NYAG and the SDNY AUSA includes, without limitation, the interagency sharing of both investigators as well as files. The totality of these circumstances have now left the RCG and Giardina with the unenviable predicament of being compelled to choose between waiving their Fifth Amendment rights in order to defend against the Plaintiff’s Complaint or, in the alternative, asserting it and creating an avalanche of adverse inferences in the civil cases

initiated by the Federal Trade Commission ("FTC") and other governmental agencies including the US Attorney and NYAG. Indeed, the NYAG and the SDNY AUSA are actively seeking to utilize civil discovery related to the instant matter to advance the SDNY AUSA's pending criminal investigation, and/or alternatively, use the pending SDNY AUSA criminal investigation to leverage RCG and Giardina invocation of the constitutional safeguards afforded by the Fifth Amendment for the purposes of obtaining an adverse inference in the NYAG's summary proceeding.

Notwithstanding this fact, the state and federal agencies seek discovery, answers, dispositive motions, and testimony from Giardina which creates an unworkable circumstance in which Giardina and RCG lose constitutional protections under both state and federal law. Therefore, under the F.R.C.P. 5.2, RCG and Giardina respectfully request to redact limited parts of the Order to Show Cause in the immediate future for a temporary restraining order. The request to redact sensitive information is to protect Giardina's constitutional rights, and to prevent disclosure of non-public information.

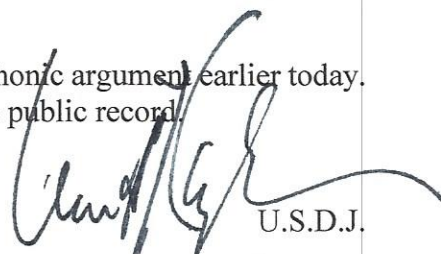
Based on the foregoing, we ask that the RCG and Giardina's request to file an Order to Show Cause under seal or redacted (in-part) be granted.

Respectfully submitted,  
s/ Anthony Varbero  
Anthony Varbero

cc: VIA ECF and email: igorecki@ftc.gov

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Application denied for the reasons stated on the record during a telephonic argument earlier today. The Clerk shall make all filings to date in this action available on the public record.

  
U.S.D.J.  
8/14/2020